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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BOARD OF BEHAVIORAL SCIENCES, Defendant and Appellant, v. GARY VINCENT VENTIMIGLIA, Plaintiff and Respondent.	B186040 (Los Angeles County Super. Ct. No. BS094183)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dzintra Janavs, Judge. Affirmed.

Bill Lockyer, Attorney General, Alfredo Terrazas, Senior Assistant Attorney General, Karen B. Chappelle, Lead Supervising Deputy Attorney General, Jennifer S. Cady and Christina Thomas, Deputy Attorneys General, for Defendant and Appellant.

Rushfeldt, Shelley & Drake LLP, Kenneth W. Drake and Erica A. Levitt for Plaintiff and Respondent.

The issue in this appeal concerns the proper interpretation of former section 4982.26 of the Business and Professions Code, the statute governing the administrative penalty for a licensed marriage and family therapist who has sexual contact with a patient or former patient.[1] Until it was amended effective January 1, 2006, section 4982.26 provided that administrative decisions containing a finding of inappropriate sexual contact "shall [also] contain an order of revocation [of the therapist's license]," and that "[t]he revocation shall not be stayed by the administrative law judge." (Stats. 1994, ch. 1274, § 32.) Section 4982.26 now provides that "*[t]he board* [referring to appellant Board of Behavioral Science of the California Department of Consumer Affairs (BBS)] shall revoke any license" where there has been a finding that the licensee engaged in inappropriate sexual contact with a patient, and that "[t]he revocation shall not be stayed by the administrative law judge *or the board*." (§ 4982.26, italics added; see § 4980.03, subd. (a).) The question raised is whether, prior to 2006, the BBS had discretion to stay the license revocation of a therapist who had engaged in such behavior. The trial court concluded, based on both the plain language of the statute and its legislative history, that former section 4982.26 permitted the BBS to exercise discretion whether to stay revocation of the license in such situations, and that the BBS erred in failing to do so in the underlying case involving the license of respondent Gary Ventimiglia, M.F.T. The court issued a writ directing the BBS to set aside its decision revoking respondent's license and to re-determine the penalty to be imposed in light of the court's ruling. We affirm.

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1 Unless otherwise specified, statutory references are to the Business and Professions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Administrative Accusation and Hearing

Respondent is a marriage and family therapist, holding a BBS-issued license since 1986. In April 2003, respondent was charged with violation of Business and Professions Code section 726 and section 4982, subdivisions (d), (i), and (k).[2] The accusation derived from his treatment of patient Sara D. from August 1999 to August 2001, during which time he engaged in sexual relations with her and otherwise failed to maintain "professional boundaries."

In July 2004, a hearing was held before an administrative law judge (ALJ). For purposes of the hearing, respondent stipulated he had "failed to establish reasonable boundaries with Sara D. in that the sessions became more personal, including physical contact" and that he "improperly engaged in a dual relationship with Sara D., which included a sexual relationship."

The ALJ rendered a proposed decision revoking respondent's license. The proposed decision stated that "[b]ecause revocation of his license is mandatory, it is not necessary to detail respondent's rehabilitative efforts," but that, in general, respondent had "presented a substantial amount of evidence regarding the background of his therapeutic and sexual relationship with Sara D., his realization

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[2] Section 726 provides that "[t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division . . . ." Section 4982 provides that the Board may suspend or revoke the license of any licensee for, among other things, "[g]ross negligence or incompetence in the performance of marriage and family therapy" (subd. (d)); "[i]ntentionally or recklessly causing physical or emotional harm to any client" (subd. (i)); and "[e]ngaging in sexual relations with a client . . . " (subd. (k)).

of the consequences of his conduct, psychological factors which drove him to violate the boundaries between himself and his patient, and his rehabilitation therefrom." The ALJ further stated that the evidence presented by respondent "was impressive, credible, and of such significance that, but for the law which mandates revocation of his license, might otherwise have led to a disciplinary order less stringent than [revocation of his license]" and that respondent's efforts "should stand respondent in good stead in the event he applies to the Board for reinstatement of his license."

On December 3, 2004, the BBS adopted the ALJ's decision with one change: deletion of the passage in the proposed decision relating to possible reinstatement of respondent's license in the future. The passages concerning mandatory revocation and respondent's rehabilitative efforts remained. The decision was set to become effective January 2, 2005.

Trial Court Proceedings

On December 23, 2004, respondent filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 and a request for stay of the BBS decision. The petition alleged that the BBS had misinterpreted former section 4982.26 by erroneously concluding that it had no discretion over the license revocation penalty imposed, and that it therefore failed to properly exercise its discretion.[3]

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[3] To support the petition and stay request, respondent asked the trial court to take judicial notice of other cases involving therapist-patient sexual relationships in which the Board had stayed revocation and imposed probation. The court ultimately denied the request.

The trial court granted the stay. After hearing the merits, the court issued a peremptory writ of mandamus, setting aside the BBS's decision and remanding respondent's case to the BBS for further consideration. In conjunction with its ruling, the court prepared a tentative order which was later deemed the statement of decision. In the order, the court explained that it agreed with respondent that the BBS had abused its discretion by failing to consider the mitigating evidence offered by respondent. "[T]he [BBS's] decision to revoke [respondent's] license was based on the erroneous interpretation of [former] § 4982.26 that it had no discretion other than to revoke the license. As such, the decision was an abuse of discretion in that the [BBS], in effect, exercised no discretion in setting the penalty."

In reaching its conclusion, the court looked to the legislative history of the statute. At one point in the process leading to the enactment of former section 4982.26, the proposed legislation would have "'prohibit[ed] an administrative law judge from issuing a stay for the order of revocation, *and [would have provided] that the decision [was] final, immediate, and not subject to vote by the [BBS]*.'" (Quoting Sen. Bill No.. 2039 (1993-1994 Reg. Sess.) as amended August 25, 1994, emphasis added by trial court.) The final version of the bill, however, deleted the italicized language, and "[the] analysis noted that [the deleted language] 'would deprive the [BBS] of the discretion to consider each case of sexual misconduct on its individual merits.'" (Quoting Dept. of Consumer Affairs, May 24, 1994 Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.) as amended April 5, 1994, p. 5.) Furthermore, the court noted that discussions concerning the need for the proposed law focused on ALJs and their perceived "lack of appreciation of the seriousness of the conduct . . . where the Board decides to impose a penalty that is

greater than that proposed by the ALJ." (Citing Sen. Rules Com. April 11, 1994 Analysis of Sen. Bill No.2039 (1993-1994 Reg. Sess.) as amended April 5, 1994, p. 3) The primary focus was thus on the authority of the ALJs, not the BBS.

Judgment was entered, and the BBS noticed a timely appeal.

DISCUSSION

The parties agree that because the trial court decision was based on interpretation of a statute, appellate review is de novo. (See *Poliak v. Board of Psychology* (1997) 55 Cal.App.4th 342, 348; *California School Employees Assn. v. Department of Motor Vehicles* (1988) 203 Cal.App.3d 634, 644.) Accordingly, we exercise our independent judgment in reviewing this matter. (*Ibid*.)

Section 4982.26 was added to the Business and Professions Code in 1994. As originally enacted (and as applicable here), it provided: "Notwithstanding Section 4982 [which permits the BBS to refuse to issue a license or to suspend or revoke the license of a party guilty of "unprofessional conduct"], any proposed decision or decision issued under this chapter in accordance with [the applicable administrative procedures], that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."[4] (Stats. 1994, ch. 1274, § 32.)

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[4] Subdivision (c)(3) of section 729 defines "'[s]exual contact'" to mean "sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse."

Section 4982.26 was amended effective January 1, 2006. Currently, it provides: "*The board shall revoke any license* issued under this chapter upon a decision made in accordance with the procedures set forth in [the applicable administrative procedures], that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact as defined in section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge *or the board*." (Italics added.) At the time of making this change, the Legislature "f[ou]nd[] and declare[d]" that the amendment "do[es] not constitute a change in, but [is] declaratory of, existing law." (Stats. 2005, ch. 658, § 40.) The BBS does not contend that the 2006 law -- which has express language precluding the BBS from issuing a stay of a license revocation -- applies to respondent's actions. The issue is whether the 1994 version of section 4982.26 should be interpreted as if it contained such a prohibition.

Although the Legislature stated in 2006 that the 1994 version of section 4982.26 has the same meaning and effect as the current statute, we are not bound by the Legislature's statement. The Legislature "has no authority to interpret a statue. That is a judicial task. The Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative authority simply to say what it *did* mean." (*Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8.) As the Supreme Court explained in *McClung v. Employment Development Dept*. (2004) 34 Cal.4th 467, 473: "It is true that if the courts have not yet finally and conclusively interpreted a statute and are in the process of doing

so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration. [Citation.] But even then, 'a legislative declaration of an existing statute's meaning' is but a factor for a court to consider and 'is neither binding nor conclusive in construing the statute.' ([*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244] . . . .) . . . A declaration that a statutory amendment merely clarified the law 'cannot be given an obviously absurd effect, and the court cannot accept the Legislative statement that an unmistakable change in the statue is nothing more than a clarification and restatement of its original terms.' (*California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 214 . . . .)"

We review the 1994 version of section 4982.26 in accordance with the accepted rules of statutory interpretation to determine whether the Legislature's belief that the 2006 amendment merely clarified its meaning is reasonable. The rules governing statutory construction are "well settled." (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) Courts are to be guided by "the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.]" (*Ibid*.) The first step "is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597.) "If the statutory language is clear and unambiguous, there is no need for construction." (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606.) "[T]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson* (2002) 28 Cal.4th 240, 244.)

Looking at the plain language of former section 4982.26, it is difficult to ascribe the meaning proposed by the BBS and the Legislature. The statute stated that administrative decisions containing a finding of sexual misconduct on the part

of a marriage and family therapist must contain a license revocation order and that the revocation cannot be stayed "by the administrative law judge." It said nothing about the BBS's power to issue a stay.

The BBS contends that the legislative history clarifies the Legislature's intent to restrict the BBS as well as ALJs. (See, e.g., *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 166 ["[T]he literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole."].) However, to justify a departure from the language of a statute, the legislative history must give rise to a clear inference as to the Legislature's purpose or intent. (*People v. Boyd* (1979) 24 Cal. 3d 285, 295; *Faria v. San Jacinto Unified School Dist.* (1996) 50 Cal.App.4th 1939, 1945.)

Here, the legislative history provides no basis for departing from the plain language of the provision at issue. Former section 4982.26 was added to the Business and Professions Code as part of Senate Bill No. 2039 (Sen. Bill No. 2039).[5] When Senate Bill Number 2039 was first brought to the floor of the Senate, proposed section 4982.26 contained the following language:

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5 When first introduced, Sen. Bill No. 2039 contained only a proposal to add section 2960.10 to the Business and Profession Code. Section 2960.10 would have governed licensed psychologists and required the Board of Psychology to revoke the license of a psychologist found to have engaged in sexual contact with a patient. (Sen. Bill No. 2039 (1993-1994 Reg. Sess.) § 1, as introduced, February 25, 1994.) The floor version of the bill that added section 4982.26, also included a number of provisions regulating respiratory care therapists, including a similar provision concerning license revocation for respiratory care therapists who engaged in improper sexual contact with a patient. Throughout the legislative process, changes to section 4982.26 were reflected in the analogous provisions governing psychologists and respiratory therapists.

"Notwithstanding Section 4982, *the board shall revoke* any license issued under this chapter upon a decision made in accordance with [the applicable administrative procedures] that contains any finding of fact that the licensee engaged in any act of sexual abuse, or sexual relations with a patient, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor." (Sen. Bill No. 2039 (1993-1994 Reg. Sess.) § 32, as amended, April 5, 1994, italics added.) The contemporaneous Senate Rules Committee Floor Analysis explained that the bill "would require [the BBS and other impacted boards] to revoke any license of a licensee under its jurisdiction upon a decision of an [ALJ] that contains any finding of fact that the licensee engaged in any act of sexual abuse, sexual relations with a patient or sexual misconduct that is substantially related to the qualifications, functions, or duties of the licensee." (Sen. Rules Com., Off. of Sen. Floor Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.), as amended April 5, 1994, p. 2.)

The digest of the April 11, 1994 hearing of the Senate Committee on Business and Professions explained that the primary concern of the drafters was the failure of ALJs to revoke the licenses of practitioners who engaged in improper sexual contact with patients, leaving to the BBS and Board of Psychology the difficult task of seeking to impose stricter sanctions than were recommended by the ALJ: "There is evidence that [ALJs] have been granting probation or suspending the sentence of a licensee of both boards [referring to the BBS and the Board of Psychology], where there is a finding that they have engaged in sexual relations with their patient or engaged in some other form of sexual misconduct. Senator Watson's Task Force on Patient Therapist Sex strongly recommended in its 1987 findings that under such situations the license of a therapist should be

revoked. However, under current law[,] ALJs do not universally recognize the harm such acts cause to victims and continue to present decisions to the board[s] wherein the license is not fully revoked. This results in the boards non-adopting the decision at extreme expense and such non-adoption cannot always ensure revocation. Under other situations[,] the boards may not take further action. Decisions proposing penalties short of revocation in these cases may result in the sexually-abusing licensee being able to continue practicing while the length of the process of non-adoption (if initiated) is being played out. The consumer, especially those who are vulnerable at the time of therapy, must be protected against this type of abuse." (Sen. Com. on Bus. & Prof., April 11, 1994 Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.), as amended April 5, 1994, p. 3.)

As we have seen, the original draft of the provision mandated license revocation by "the board," but did not definitively prohibit issuance of a stay by either the ALJ or the BBS. The second version of the provision, proposed by the Assembly, seemed to represent an attempt to resolve any potential ambiguity by expressly withholding such power from both the ALJs and "the board." It stated: "Notwithstanding Section 4982, any proposed decision or decision issued under this chapter in accordance with [the applicable administrative procedures] that contains any finding of fact that the licensee or registrant engaged in any act of sexual abuse of, or sexual relations with, a patient, shall contain an order of revocation. *The revocation shall not be stayed by the administrative law judge, and the decision shall be final, immediate, and not subject to a vote by the board*." (Legis. Counsel's Dig., Sen. Bill No. 2039 (1993-1994 Reg. Sess.), § 32, as amended in Assembly, June 30, 1994.) The Assembly Committee on Health explained that this version of the bill "[p]rovides that the revocation of a license for

sexual misconduct is not subject to board vote and cannot be stayed by the administrative law judge in the disciplinary case." (Assem. Com. on Health, July 5, 1994 Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.), as amended in Assembly June 30, 1994, p. 1.)

Had the bill achieved passage containing the italicized language, there is little doubt that the BBS would have lacked discretion to mitigate discipline in matters governed by section 4982.26. However, the language was changed again in the third and final version of the bill by deletion of the phrase "and the decision shall be final, immediate, and not subject to a vote by the board."[6] (Sen. Bill No. 2039 (1993-1994 Reg. Sess.) § 32, as amended in Assembly August 25, 1994.) The Assembly Committee on Health explained that this version of section 4982.26 -- the version that was ultimately enacted -- "[r]equires that any decision issued under Administrative Procedures Act that contains a finding that a . . . marriage, family and child counselor . . . engaged in any act of sexual contact with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, contain an order of revocation. The revocation cannot be stayed by *the administrative law judge*." (Assem. Com. on Health, August 24, 1994 Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.), as amended in Assembly August 25, 1994, p. 1, italics added.) This analysis was echoed by the Senate Rules Committee, which stated: "Assembly Amendments: . . . Require revocation of license[s] for sexual contact rather than sexual misconduct, include former patients in certain circumstances, and prohibit the revocation from being stayed by the administrative law judge." (Sen. Rules Com.

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6 This amendment also altered other language of the provision, changing the reference to "sexual abuse or sexual relations" to "sexual contact, as defined in Section 729" and adding the provision relating to former patients.

August 25, 1994 Floor Analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.), as amended by Assembly August 25, 1994, p. 1.)

As noted by the trial court, some indication why this change was made can be found in the lengthy analysis of the second version of the proposed legislation by the Department of Consumer Affairs: "The 1986 Senate Task Force on Psychotherapist and Patient Sexual Relations found that of those therapists who become sexually involved with their patients/clients, 80 percent do so with more than one patient/client (usually with two to five). Thus, 20 percent of therapists who become sexually involved with a client, do not pose a public threat, but mistakenly (and perhaps genuinely) become sexually involved with a client. [¶] While sexual conduct is a very serious matter, there may be situations in which extenuating factors exist where revocation of a license is not warranted, and the public may be protected by imposing appropriate conditions and limitations upon the licensee as probationary terms. [¶] It is the board's function to use its professional expertise to ensure that appropriate decisions are made by the ALJs. SB 2039 would deprive the board of the discretion to consider each case of sexual misconduct on its individual merits." (Dept. of Consumer Affairs, May 24, 1994 analysis of Sen. Bill No. 2039 (1993-1994 Reg. Sess.) as amended April 5, 1994, p. 5.)

"When the Legislature rejects language from a bill which was part of it when it was introduced, it should be construed according to the final version." (*Stroh v. Midway Restaurant Systems, Inc*. (1986) 180 Cal.App.3d 1040, 1055; accord, *Rich v. State Board of Optometry* (1965) 235 Cal.App.2d 591, 607 ["The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include

the omitted provision."]; *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 88-89.) An exception to this rule exists if the omitted language can be viewed as surplusage, "unnecessary in view of the broad language of the act as finally passed." (*Burks v. Poppy Construction Co*. (1962) 57 Cal.2d 463, 469.) Here, however, there was no language in the final draft to suggest the Legislature intended to curtail the discretion normally afforded the BBS to reduce the proposed penalty, stay the proposed penalty, or grant probation to an offender in the presence of mitigating circumstances (see Gov. Code §§ 11517, subd. (c)(2)(B), 11519, subd. (b); Cal. Code Regs., tit. 16, §§ 1814, 1888). The final version precluded only "administrative law judge[s]" from issuing stays. The term "administrative law judge" whether given a commonsense or statutory definition cannot be interpreted to include the BBS or any other administrative board. (See Gov. Code § 11502 [describing administrative law judges as conducting factual hearings].)

In *Madrid v. Justice Court* (1975) 52 Cal.App.3d 819, the issue was whether criminal proceedings could be instituted for welfare fraud against a recipient who had made restitution. The court noted that the Legislature had considered and rejected a provision stating that a criminal action was to be initiated only after a civil action had proven unsuccessful. That the amendment was rejected, the court concluded, was "a clear indication from the Legislature that it did not wish to impose such a halter on the prosecution of welfare frauds." (52 Cal.App.3d at p. 825.) The same is true here. The Legislature's elimination of the reference to "the board" contained in the first and second versions of section 4982.26 can only be seen as an indication that the BBS was to retain discretion.

The BBS contends that the Legislative Counsel's Digest supports its interpretation of the provision. When Senate Bill Number 2039 was enacted, the Legislative Counsel stated: "This bill would, notwithstanding [§ 4982], require the board to include an order of revocation of any license to practice psychology upon a proposed decision or decision made, in accordance with any specified procedures, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined, with a patient, or with a former patient in described circumstances. It would prohibit an administrative law judge from issuing a stay of the order of revocation." (Legis. Counsel's Dig., Sen. Bill No. 2039 (1993-1994 Reg. Sess.) as chaptered.) This language does not unambiguously express an understanding that former section 4982.26 prohibited the BBS from staying an order of revocation. Instead, like former section 4982.26 itself, the Legislative Counsel's comments make clear that ALJs have no such power, while leaving unaddressed the BBS's discretion. Moreover, review of the legislative history shows that the Legislative Counsel changed its analysis to fit the language as the bill wended its way towards passage. Originally, the Legislative Counsel stated that the bill would "require the board to revoke any license of a licensee, . . .upon a decision . . . that contains any finding of fact that the licensee engaged in any act of sexual abuse, sexual relations with a patient, or sexual misconduct . . . ." (Legis. Counsel's Dig., Sen. Bill No. 2039, as amended April 5, 1994.) When the second, more restrictive, version of the provision was proposed, the Legislative Counsel stated "This bill . . . would prohibit an administrative law judge from issuing a stay for the order of revocation, and would provide that the decision is final, immediate, and not subject to vote by the board." (Legis. Counsel's Dig., Sen. Bill No. 2039, as amended June 30, 1994.) The final version,

quoted above, provides only that ALJs are prohibited from issuing a stay. That the Legislative Counsel's analysis itself changed over time necessarily reflects awareness that each version of section 4982.26 had a distinct meaning.

The BBS contends that *Poliak v. Board of Psychology, supra*, 55 Cal.App.4th 342 supports its position that it lacked discretion under the 1994 statute. In *Poliak*, the licensee (a psychologist) was charged with engaging in sexual relations with a patient seven months after terminating the professional relationship. The primary issue on appeal was whether the statutes in existence during the relevant period (approximately 1989 to 1991) empowered the Board of Psychology to revoke a psychologist's license based on sexual contact with a former patient. Noting that there was no language in the relevant statutes prohibiting sexual contact with former patients until the addition of section 2960.1 to the Business and Professions Code in 1994, the court held that the Board of Psychology erred in revoking the license.

Contrary to the BBS's assertion, *Poliak* supports the trial court's decision. As the trial court did here, the court in *Poliak* refused to read language into a statute that was not there. In addition, both courts rejected the proposition that language contained in a newly enacted provision impacted the interpretation of the statute in place when the conduct occurred.

In sum, the Legislature had an opportunity in 1994 to pass a version of section 4982.26 that specifically forbade the BBS from intervening in license revocation proceedings where the licensee engaged in sexual contact with a patient or former patient. Instead, it deleted the language that would have accomplished that objective and enacted legislation that placed curbs on ALJs only. Until passage of the 2006 version of section 4982.26, the BBS retained discretion to stay

the revocation order contained in an ALJ's decision. The trial court correctly ruled that the BBS abused its discretion by failing to consider the mitigating factors introduced by respondent.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.